

**EXHIBIT E**  
**SOFTWARE LICENSE AND MAINTENANCE AGREEMENT**

Software License Agreement No. \_\_\_\_\_

THIS AGREEMENT is entered in this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

\_\_\_\_\_, a Corporation having offices  
at: \_\_\_\_\_ hereinafter  
referred to as "LICENSEE",

- and -

**ETI-NET Inc.**, a Canadian Corporation having offices at 180 Rene Levesque Est, Bureau 320, Montreal, Quebec, H2X 1N6, Canada hereinafter referred to as "ETI-NET".

WHEREAS LICENSEE wishes to license from ETI-NET and ETI-NET wishes to license to LICENSEE such computer software ("Software") as described in license orders executed by ETI-NET and LICENSEE in the form attached hereto as Appendix A ("License Order"), all on the following terms and conditions.

**1. TERMINOLOGY**

"Copy (ies)" means each separate occurrence of any Licensed Product, or portion thereof.

"Designated Equipment", for any Licensed Product, means a computer system which is within the possession and control of LICENSEE, as identified in Appendix A.

"License Fee", for any Licensed Product, means the onetime fee payable by LICENSEE for such Licensed Product as indicated, if applicable, in the License Order for that item.

"License File" means the computer file that is part of the Licensed Product and contains information about the Designated Equipment.

"Licensed Product" means any item of the Software described in Appendix A and includes the machine object code which allows that item to be used, user documentation, all updates and any related materials which are furnished to LICENSEE by ETI-NET for use in connection with that item.

"Maintenance Site", for any Licensed Product, means the site of the Designated Equipment for that Licensed Product.

"Software Maintenance Charge", for any Licensed Product, means the charge payable by LICENSEE for the maintenance of that Licensed Product as indicated in the License Order for that item.

"Update" means any improvement, extension or other change made by ETI-NET to a Licensed Product.

"Use" shall be the execution on Designated Equipment only of each single copy of any one or more Licensed Product(s).

**2. LICENSE**

ETI-NET hereby grants LICENSEE a non-exclusive, nontransferable license, without rights to sub-license, to use each Licensed Product on the Designated Equipment. LICENSEE will not permit any Licensed Product to be used on any other computer system. The license granted hereby for any Licensed Product will terminate in the event that the Designated Equipment for such Licensed Product ceases to be within the possession and control of LICENSEE.

### **3. CONFIDENTIALITY AND RIGHTS TO PROPERTY**

- a. LICENSEE acknowledges that certain material and information which has or will come into its possession in connection with this Agreement, or the performance hereof, consists of confidential and proprietary data and information, of which the disclosure to or use by third parties could be damaging. Confidential and proprietary data and information includes, but is not limited to, information related to Licensed Product(s) supplied hereunder and all software as well as the research, development, trade secrets or business affairs of ETI-NET, its employees, customers, subsidiaries, affiliates and agents. LICENSEE, therefore, agrees to hold such data and information in the strictest confidence, and not to release any such data or information except to employees or contractors requiring such data or information in connection with the use of any Licensed Product. LICENSEE hereto agrees to take all necessary action with respect to its employees or contractors to ensure that the obligations of non-use and non-disclosure of confidential and proprietary data and information under this Agreement will be strictly applied.
- b. Nothing herein shall limit LICENSEE's use or dissemination of information or data (i) which is in the public domain, (ii) which was revealed by ETI-NET to the others on a non-confidential basis, or (iii) pursuant to the direction of any court.
- c. LICENSEE will hold each Licensed Product in confidence at least to the same extent that it protects its own similar confidential information and will take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of each Licensed Product. No portion of a Licensed Product may be duplicated by LICENSEE except that LICENSEE may (i) copy and distribute Updates to Designated Equipment and (ii) make copies of any machine object code portion of a Licensed Product for normal security, backup, disaster and contingency purposes. Only one copy of the Licensed Product will be used in production at any onetime. LICENSEE will properly reproduce on each such copy all notices of ETI-NET's patent, copyright, trademark or trade secret rights in such Updates or such portion. LICENSEE will not reverse compile any Licensed Product.
- d. If through LICENSEE's negligence, confidential or proprietary data or information pertaining to ETI-NET is in the possession of a third party without the express written consent of ETI-NET, LICENSEE shall, at its expense, process against, through negotiation or litigation, any third party who acquires confidential or proprietary data or information from LICENSEE. LICENSEE shall utilize all necessary legal remedies to enjoin or otherwise prevent such third party from dispersing or disseminating said data or information to any other party, and LICENSEE shall further enjoin and prevent such third party from using confidential or proprietary data or information for its own purpose. If LICENSEE is unwilling or unable to proceed against any third party who has acquired such confidential or proprietary data or information as a result of LICENSEE's negligence, ETI-NET may proceed against such third party to protect ETI-NET's rights, data and information through negotiation or litigation and LICENSEE shall reimburse ETI-NET for all reasonable costs or expenses. LICENSEE will indemnify ETI-NET for any loss as a result of a third party acquiring confidential or proprietary data or information as a result of LICENSEE's negligence.
- e. LICENSEE's obligations under this Section 3 shall survive the termination of the license granted under this Agreement.

### **4. TITLE**

Full proprietary rights (including copyrights and trademarks) and titles to all Licensed Product, and all programs, source codes, tapes listings, and other programming documentation, prepared for or delivered to LICENSEE pursuant to this Agreement, shall remain with ETI-NET.

### **5. DELIVERY AND INSTALLATION**

ETI-NET or its authorized representative will deliver each Licensed Product to LICENSEE and will, upon request, install it on the Designated Equipment or provide assistance via the hotline.

### **6. MAINTENANCE PROGRAM**

- a. ETI-NET will provide remedial maintenance for each Licensed Product during the warranty period and thereafter for so long as the Software Maintenance Charges have been paid for so that it will operate on the Designated Equipment in all material respects as described in ETI-NET's then current user documentation. Remedial maintenance will include action to verify a problem's existence and to determine conditions under which the problem may recur, but does not include further diagnosis. After such verification and determination, ETI-NET will provide the necessary corrective measures to keep the Licensed Product in operating order in conformity with the warranties herein. Corrective measures taken by ETI-NET include the following:
  1. an immediate temporary tested bypass of the problem will be sent to LICENSEE via communications line or using overnight delivery services for all problems which prohibit LICENSEE from performing critical functions. ETI-NET will make its best effort to provide a working and tested bypass as soon as possible. A long-term solution

will be developed by ETI-NET and made available to LICENSEE within thirty (30) days of delivery of the temporary bypass;

2. a statement that the problem will be corrected in a future update which will be provided within six (6) months (for noncritical functions only);
3. a statement that more information about the problem is required, including the specific documented information required and documented instructions for attaining that information;
4. a statement that the Licensed Product operates in all material respects as described in ETI-NET's then current user documentation or that the problem arises when such current product is used in a manner for which it was not designed;
5. a statement that the Licensed Product operates in all material respects as described in ETI-NET's then-current user documentation including specific information regarding LICENSEE's incorrect use of product which may be responsible for the problem.

Said services shall be provided without charge except where ETI-NET is called upon by LICENSEE to correct an error and such error is proven to be caused by LICENSEE's negligence, modification by LICENSEE, which is not made pursuant to ETI-NET's direction, supplied data which does not conform to required ETI-NET formats, machine failure, operator error, or any other cause not inherent in the Licensed Product, or not resulting from ETI-NET's acts or omissions whereupon ETI-NET reserves the right to charge LICENSEE for such service on a time-and-materials basis at ETI-NET's then-current rates.

- b. Upon request, ETI-NET will periodically deliver one copy of each Update of the machine object code portion of a Licensed Product to the Maintenance Site for such current product. LICENSEE will promptly install such Update on the applicable Designated Equipment.
- c. Upon request, ETI-NET will periodically deliver one copy of each update of user documentation for each Licensed Product to the applicable Maintenance Site. ETI-NET reserves the right to require payment of a fee for additional copies of updates to user documentation.

## **7. TERM**

- a. The license for any Licensed Product granted by this Agreement will be effective from the date of receipt of the Licensed Product and will remain in force for an unlimited period unless terminated pursuant to any provision of this Agreement
- b. The maintenance services will be offered by ETI-NET for a period of one year from the expiration date of the warranty and will be renewed automatically from year to year unless notice is given as described in Section 14.c.

## **8. EXPENSES, FEES, TAXES**

- a. LICENSEE agrees to reimburse ETI-NET for reasonable out-of-pocket travel expenses incurred for airfares, hotels, meals and ground transportation while installing, training, developing or providing other services to LICENSEE, when such services are requested by LICENSEE.
- b. In consideration of the license granted hereunder and the maintenance services to be performed, LICENSEE will pay to ETI-NET the License Fee and Software Maintenance Charge, respectively, for each Licensed Product for which a License Fee is payable as set forth in the applicable License Order. ETI-NET will invoice the License Fee for each Licensed Product upon shipment, or as provided in Appendix A. The Software Maintenance Charge will be billed yearly in advance commencing upon the expiration of the warranty for the Licensed Products.
- c. All invoices will be due and payable within thirty (30) days of the receipt of invoice by LICENSEE. Late payments will bear interest from due date until receipt by ETI-NET, at the rate of twenty per cent (20%) per year.
- d. License fees and Software Maintenance Charges do not include any taxes, levies, deductions or similar governmental charges, however designated, which may be imposed by any jurisdiction. LICENSEE will pay all such taxes or provide ETI-NET with a certificate of exemption from such taxes acceptable to the appropriate taxing authority. LICENSEE shall indemnify ETI-NET with respect to any claim against or liability of ETI-NET in connection with the foregoing including interest, penalties and fines relating thereto, where such interest, penalties and fines are directly due and payable as a result of an act or failure to act on the part of LICENSEE.

- e. Software Maintenance Charges may be increased or decreased from the amounts set forth in the applicable License Order, upon not less than ninety (90) days notice to LICENSEE prior to the renewal date. Maintenance charges shall not increase by more than ten (10) percent per year.
- f. The basic maintenance charges include access to the hotline telephone service for Software Maintenance Support during the standard coverage period from 9:00 to 21:00 Eastern standard time, Monday to Friday, excluding Montreal's local holidays. Upon request, ETI-NET will provide extended hotline telephone service coverage, which service will be billed in addition to the basic maintenance charges.

## **9. LICENSEE'S RESPONSIBILITIES**

- a. LICENSEE will not reproduce any Licensed Product and will not modify, or permit any person other than ETI-NET to modify, any portion of any Licensed Product including any proprietary markings, without prior written approval from ETI-NET.
- b. LICENSEE will identify, document and report each problem with a Licensed Product necessitating maintenance service, will supply ETI-NET with all documentation and assistance necessary to demonstrate and diagnose the problem and will implement each patch, bypass, update or other solution to such problem provided by ETI-NET. If LICENSEE requests remedial maintenance and ETI-NET determines that the malfunction is not related to the Licensed Product, or does not result from ETI-NET's acts or omissions, ETI-NET may charge LICENSEE for its services on a time and materials basis at ETI-NET's then-current rates. ETI-NET's liability hereunder will be subject to limitations contained in section 12 of this Agreement.
- c. LICENSEE will assure the proper use, management and supervision of the Licensed Products and of any application programs, audit controls, operating methods and office procedures necessary for the intended use thereof. ETI-NET reserves the right to request a copy of the License File in use with the Licensed Product and the LICENSEE will provide such copy to ETI-NET at no charge for the sole purpose of examining the usage of the Licensed Product with the Designated Equipment.

## **10. WARRANTY**

ETI-NET warrants to LICENSEE that the Licensed Product(s) will perform in all material respects in accordance with ETI-NET's published specifications and documentation for the then current version thereof for a period of ninety (90) days from the date of reception by LICENSEE. During this period, ETI-NET agrees to correct any programming errors found in the Licensed Product(s) and make such modifications, additions, and adjustments as may be necessary without unnecessary delay. Said services shall be provided without charge by ETI-NET except where ETI-NET is called upon by LICENSEE to correct an error and such error is proven to be caused by LICENSEE'S negligence, modification by LICENSEE, supplied data which does not conform to required ETI-NET formats, machine failure, operator error, or any other cause not inherent in the Licensed Product(s), or not resulting from ETI-NET's act or omissions, whereupon ETI-NET reserves the right to charge LICENSEE for such service on a time-and-materials basis at ETI-NET's then-current rates.

ETI-NET MAKES NO WARRANTIES OTHER THAN THOSE SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF THE CONDITION, QUALITY OR FREEDOM OF ERROR OF THE LICENSED PRODUCT(S), THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

## **11. INTELLECTUAL PROPERTY RIGHTS**

ETI-NET warrants to LICENSEE that (a) ETI-NET owns or is duly licensed to use and sub-license all Licensed Products, and any portion thereof, (b) ETI-NET has the full power and authority to grant LICENSEE all rights herein conferred, and (c) the Licensed Products, and any portion thereof do not infringe or violate any patent or copyright of any third party. ETI-NET shall defend any suit or proceeding brought against LICENSEE insofar as the same is based on a claim that Licensed Product constitutes an infringement of any patent or copyright, provided that ETI-NET is notified promptly in writing of same and is given by LICENSEE full authority, information and assistance for the defense of same; and ETI-NET will pay all damages and costs finally levied against LICENSEE if ETI-NET is proven guilty of patent or copyright infringement.

ETI-NET will have no liability to LICENSEE under this Section with respect to any claim of patent or copyright infringement which is based upon (i) the combination of any Licensed Product with any device other than for which the current product has been designed for, (ii) any modification of any Licensed Product by a party other than ETI-NET or (iii) the failure by LICENSEE to install promptly any Updates furnished by ETI-NET.

## **12. LIMITATION OF LIABILITY**

In no event will ETI-NET be liable for special, indirect, incidental or consequential damages resulting from loss of use, data or profits arising out of or in connection with this Agreement or the use or performance of any Licensed Product(s). This exclusion will apply regardless of the form of action brought against ETI-NET. In no event will ETI-NET's total liability for any damages in any action exceed the total amount paid to ETI-NET by LICENSEE under the license order for the specific Licensed Product that caused the damages or that is the subject matter of, or directly related to, the cause of action.

### **13. MODIFICATIONS**

ETI-NET may agree to LICENSEE's request to make particular modifications to Licensed Product(s). Such modifications, as well as any corresponding fees and expenses, shall be incorporated into this Agreement in Appendix B or additional attachment(s) thereto, and shall be further subject to all the terms and conditions of this Agreement unless specifically stated otherwise.

### **14. TERMINATION**

- a. Should LICENSEE (i) cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of a receiver for its business or assets or avail itself of, or become subject to, any proceeding under any statute of any governing authority relating to insolvency or the protection of rights of creditors and any of the foregoing shall remain unvacated and in effect for a period of sixty (60) days; or (ii) fail to perform any of its material obligations hereunder for a period thirty (30) days after receipt of notice from ETI-NET of such failure; ETI-NET will, in addition to such other rights as it may have under law, have the right to terminate immediately any or all of the licenses granted hereunder by notice to LICENSEE.
- b. Should ETI-NET fail to perform any of its obligations hereunder for a period of thirty (30) days after receipt of notice from LICENSEE of such failure, LICENSEE will, in addition to such other rights as it may have under law, have thereafter the right to terminate immediately the licenses granted hereunder by notice to ETI-NET and, following the effective date of such termination, the LICENSEE's obligation to pay any further Software Maintenance Charges hereunder shall also be terminated.
- c. LICENSEE may terminate the obligation to pay further Software Maintenance Charges with respect thereto, by giving notice to ETI-NET, not less than ninety (90) days prior to the last day of the period for which the maintenance services have been paid.
- d. Upon termination of this Agreement for any reason, LICENSEE shall immediately: (i) pay to ETI-NET all money due; and (ii) relinquish all rights herein contained and return to ETI-NET all Licensed Products and Updates received hereunder from ETI-NET.

### **15. IDENTIFICATION REQUIREMENTS**

LICENSEE shall notify ETI-NET in writing fifteen (15) days prior to the installation of any copy of any Licensed Product on any Designated Equipment. The information required shall include (i) the replacement or addition of Designated Equipment(s), (ii) the replacement or addition of processors to any Designated Equipment and (iii) the System Node Name and location(s) of the Designated Equipment. ETI-NET shall provide LICENSEE with a new License File for the Licensed Product on the new Designated Equipment and, if applicable, charge LICENSEE an upgrade price. ETI-NET reserves its right to charge LICENSEE for reasonable costs incurred in the preparation and shipping of the License File.

### **16. ESCROW OF SOURCE CODE**

ETI-NET agrees to keep, and maintain current, a copy of the source code of the Licensed Product(s) in escrow at CIBC MELLON TRUST COMPANY, 2001 avenue Université, Montréal, Québec, H3A 2A6, Canada, and to execute an Escrow Agreement with said escrow agent for which shall govern the terms and conditions of said escrow. ETI-NET shall be authorized to change escrow agents upon written notice to LICENSEE. The Escrow Agreement shall provide inter alia for the release to LICENSEE of the escrowed source codes upon the occurrence of one of the following events:

- a. ETI-NET discontinues maintenance for a Licensed Product, in which case the source code for that Licensed Product will be provided upon LICENSEE's written request at the time of such discontinuance; or
- b. ETI-NET ceases to conduct business (other than through merger or consolidation where there is a surviving entity), in which case the source codes for all Licensed Products will be provided at the actual time of business cessation.

### **17. MISCELLANEOUS**



- a. Any notices required to be given hereunder will be given in writing and sent by registered mail or by fax to the address of the appropriate party(s) indicated on the first page of this Agreement or to such other address as such party may have designated by prior written notice to the other party. Such notices will be deemed received five days after posting or one day after facsimile transmission. All notices to ETI-NET will be addressed to the Attention of " Vice President, Marketing ".
- b. Neither party shall be responsible for delays resulting from acts beyond the reasonable control of such party. Such acts shall include acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, other disasters or other events in the same kind, and under reserve of paragraph 17.c, governmental regulations superimposed after the fact.
- c. This Agreement is made subject to any present or future laws, regulations, orders or other restrictions of Canada on the export from Canada or of these jurisdictions of Licensed Products, or of information about Licensed Products. LICENSEE (i) will comply with all such laws, regulations, orders and other restrictions to the extent that they are applicable to LICENSEE and (ii) will not, directly or indirectly, export any such Licensed Product or information to any country for which any governmental agency requires an export license or other approval without first obtaining the same.
- d. This Agreement is not assignable in whole or in part by LICENSEE without written permission from ETI-NET; any attempt to assign rights, duties or obligations which arise under this Agreement without such permission shall be void.
- e. The waiver, amendment or modification of any provision hereof will not be effective unless in writing and signed by the party against whom enforcement of such waiver, amendment or modification is sought. The terms of this Agreement may be amended or modified through an Addendum to the Agreement signed by ETI-NET and LICENSEE.
- f. In the event an inconsistency exists between this Agreement and any Appendix, Schedule or Attachment hereto, the Appendix, Schedule or Attachment shall control. Defined terms found in this Agreement or in any Appendix, Schedule or Attachment apply throughout the complete Agreement. This Agreement includes all Appendices, Schedules or Attachments mentioned in this Agreement.
- g. This Agreement together with the License Order relating to a specific Licensed Product, constitutes the entire Agreement for the licensing and maintenance of such Licensed Product. There are no other Agreements or understandings, oral or written, relating to such licensing and maintenance by which the parties intend to be bound. This Agreement will be governed by, and construed in accordance with, the laws of the Province of Quebec, Canada, and the laws of Canada applicable therein.

IN WITNESS WHEREOF, LICENSEE and ETI-NET have caused this Agreement to be duly executed by their duly authorized representatives as of the later of the dates indicated below.

**"ETI-NET"**  
**ETI-NET Inc.**

**"LICENSEE"**

\_\_\_\_\_  
 (Company Name)

\_\_\_\_\_  
 (Authorized Signature)

\_\_\_\_\_  
 (Authorized Signature)

Name (Print): \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Name (Print): \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_